

6 Official Opinions of the Compliance Board 192 (2009)

Exceptions Permitting Closed Sessions – Business Location, §10-508(a)(4) – Discussion of collateral matters which public body would be expected to address in evaluating business proposal – within exception

Compliance Board – Authority and Procedures – Minutes of closed session submitted for Compliance Board’s review – Confidentiality generally required

November 23, 2009

*Kim Kohl, Executive Director
Sassafras River Association*

The Open Meetings Compliance Board has considered your complaint suggesting that the County Commissioners of Kent County may have violated the Open Meetings Act on March 3, 2009, by considering matters during a closed session that exceeded the permissible bounds for which a meeting may be closed. For the reasons explained below, we find that no violation occurred.

I

Complaint and Response

According to the complaint, on March 3, 2009, the Kent County Commissioners conducted a closed meeting regarding a proposed rubble landfill in the northern part of Kent County. Those in attendance included the Commissioners, the County’s Economic Development Director, and four representatives from Kent Recycling and Land Reclamation, LLC. The Sassafras River Association has significant environmental concerns regarding the proximity of the proposed site to the Sassafras River. According to the complaint, the Sassafras River Association is satisfied that “there were confidential elements of the ... meeting that are in accordance with Section 10-

508.”¹ However, “the Association remains concerned that there were other related items discussed during that meeting that do not qualify for closed session status.” (emphasis in original).²

In a timely response on behalf of the County Commissioners, Thomas Yeager, County Attorney, indicated that the Commissioners’ position is that no violation of the Open Meetings Act occurred. The meeting was closed pursuant to §10-508(a)(4). Citing 1 *OMCB Opinions* 28 (1993), the response noted that “this exception ... reflects the legislature’s understanding that some businesses might be deterred from making proposals about relocation, expansion, or retention if all such discussions were open to public view.” Included with the response was a copy of the written statement prepared in closing the meeting which indicated under topics to be discussed, “[b]usiness proposing to locate in Kent County and assistance being sought from county to enable this business proposal.” Under the caption “reason for closing,” the document indicated “[r]equest from business for closed discussion to protect its proprietary information and negotiations that are taking place to enable this business to locate in the county.”

The response also noted that the publicly available minutes confirmed that discussions were limited to those matters for which a closed meeting is permitted. The summary of the closed session included in the minutes reflects that the topics of discussion related to a proposal for a business to locate in the County and assistance from the County. This document identified the applicable business and indicated that the consensus among the Commissioners was that further research was required before it could be determined whether or not it was in the County’s interest to participate in the project.

¹All statutory citations are to the Open Meetings Act, Title 10, Subtitle 5 of the State Government Article, Annotated Code of Maryland.

² Prior to filing the complaint the Sassafras River Association submitted a Public Information Act request to the County Commissioners’ office for records relating to the meeting, including minutes of the closed session. The county denied the request. Under the Open Meetings Act, generally minutes of a closed session are considered sealed unless the public body chooses to make them public. §10-509(c)(3). Although the minutes are available to the Compliance Board, we are required to maintain the confidentiality of the document unless the public body chooses to make it public. §10-502.5(c)(2)(iii). Of course, we have no authority to address access to any documents not required under the Open Meetings Act.

Finally, the response included a copy of the minutes of the closed meeting with the understanding the document would remain confidential. As summarized in the County's response, "the minutes indicate that there was a proposal regarding the location of a new business within the county, some question were asked by the Commissioners in that regard, and a consensus was reached among the Commissioners that further research is needed by the business. Nothing else was discussed."

II

Analysis

The Open Meetings Act provides an exception whereby a public body has the option to close a meeting, subject to the Act's procedural requirements, in order to "consider a matter that concerns the proposal for a business or industrial organization to locate, expand, or remain in the State." §10-508(a)(4). Like any exception under §10-508(a), this exception must be strictly construed. §10-508(c). Thus, we have previously held that this exception only extends to proposals involving a private entity. 2 *OMCB Opinions* 56, 59 (1999).

The public record of the closed session is rather limited. The statement prepared in advance of the closed session reveals that a business proposed to locate in the County and that County assistance was sought. It also stated that the business requested that the meeting be closed "to protect ... proprietary information" and ongoing negotiations. The summary provided in the publicly available minutes sheds a little more light, revealing who was present and that the Commissioners felt further research was needed. Although the summary reflects that representatives of Kent Recycling and Land Reclamation, LLC were present, the reader is left to guess the nature of the business activity at issue.

However, the closed session minutes provided, among other information, significant detail in terms of the respective roles of the business and the County should the proposal move forward. But given that the available details are confined to this document, we are limited in our ability to publicly address the scope of discussions. Nevertheless, in our view, discussion did not transcend the exception relied on in closing the meeting.

While the Act requires that the exception be construed narrowly, that does not mean that the County Commissioners could not address any collateral matters – matters that the Commissioners would be expected to address in

evaluating a business proposal. While the scope of discussions was indeed broad, it is unrealistic to expect that the matters discussed could have been practically separated and discussed outside of the context of the specific business proposal. Thus, based on our review of the record, the County Commissioners did not violate the Act when they met with represents of a private business to discuss the business proposal at issue.

III

Conclusion

We find that the County Commissioners of Kent County did not violate the Open Meetings Act when they met in a closed meeting with representatives of a private sector entity to discuss a business proposal that the representatives desired to develop in Kent County.

OPEN MEETINGS COMPLIANCE BOARD

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